

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE;
CENTER FOR BIOLOGICAL DIVERSITY; DEFENDERS OF
WILDLIFE; NATURAL RESOURCES DEFENSE COUNCIL,
INC.; NORTH CAROLINA COASTAL FEDERATION;
OCEANA; ONE HUNDRED MILES; SIERRA CLUB; AND
SURFRIDER FOUNDATION,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE; WILBUR ROSS,
in his official capacity as the Secretary of Commerce;
and CHRIS OLIVER, in his official capacity as the
Assistant Administrator for Fisheries,

Defendants.

Civ. No. 2:18-cv-3326-RMG
(Consolidated with 2:18-cv-
3327-RMG)

**STIPULATION
REGARDING RULE
26(a)(1) INITIAL
DISCLOSURES**

In this litigation, Plaintiffs and Plaintiff-Intervenors, the State of Maryland *et al.*, bring claims under the Marine Mammal Protection Act, Endangered Species Act, National Environmental Policy Act, and the Administrative Procedure Act, challenging Federal Defendants' issuance of Incidental Harassment Authorizations for five proposed seismic surveys on the U.S. Atlantic Outer Continental Shelf. *See* ECF Nos. 1, 68, 126 138. The State of South Carolina ex rel Alan Wilson, Attorney General has made additional claims as set forth in the South Carolina's Complaint in Intervention.

On February 20, 2019, this Court issued its standard Conference and Scheduling Order, *see* ECF No. 125, requiring the parties to conduct a Rule 26(f) conference by March 13, 2019 and to submit a Rule 26(f) report by March 27, 2019. In response, the parties provide this filing today, as well as the Rule 26(f) report filed as ECF No. 239.

The Court's Order contained subsequent deadlines, including but not limited to, for the completion of discovery, the identification of expert witnesses, the briefing of dispositive motions, and ultimately, for trial. *Id.* Because Plaintiffs' and Plaintiff-Intervenors the State of Maryland *et al.*'s current claims challenge final administrative actions, Plaintiffs and Plaintiff-Intervenors the State of Maryland *et al.* and the State of South Carolina ex rel Wilson, Federal Defendants, and Intervenor-Defendants (hereinafter "Agreed Parties") agree that these APA claims should be decided based on the agency's administrative record. *See* 5 U.S.C. § 706 (providing that the Court's review shall be based on "the whole record or those parts of it cited by a party").¹

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(i) and Local Civil Rule 26.02, the Agreed Parties submit that the requirements of Rule 26(a)(1) and Local Civil Rules 26.01 and 26.03 do not apply in this case. Accordingly, the Agreed Parties, other than South Carolina, believe that they are exempt from the requirements set forth in the Court's February 20, 2019 Order, including the requirement to submit initial disclosures. Until the Court adjudicates Federal Defendants' forthcoming motion to dismiss South Carolina's unique claims, the Agreed Parties agree that no other party will provide any other party with initial disclosures at this juncture.

Respectfully submitted this 27th day of March, 2019.

¹ Plaintiff-Intervenor South Carolina states that it does not agree to such a limitation as to its non-APA claims. Although South Carolina has claims such as nuisance that are not APA based, South Carolina does not believe that discovery is needed as to them; however, South Carolina reserves the right to use exhibits filed in support of the Preliminary Injunction Motions to support its non-APA claims. Federal Defendants and Intervenor-Defendants disagree with South Carolina's position, contend that the causes of action in South Carolina's complaint in intervention are governed by the APA, and reserve the right to oppose discovery and object to South Carolina's use of any materials outside of Federal Defendants' administrative record to support its unique claims.

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